

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: Peter Zatloukal	Examiner	: Ali, Farhad
Application No.	: 10/531,162	Art Unit	: 2446
Filed	: April 12, 2005	Docket No.:	120083-141790
For	: A MOBILE DIGITAL COMMUNICATION/COMP UTING DEVICE HAVING A CONTENT SENSITIVE AUDIO SYSTEM	Date	: October 4, 2010

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S APPEAL BRIEF

To the Commissioner for Patents:

This Appellant's brief is being filed under CFR 41.37 in furtherance of the Notice of Appeal, filed in this case on June 16, 2010, and in response to the Pre-Appeal Brief Conference Decision mailed August 3, 2010. The fees for filing an Appellant's Brief and for an extension of time are submitted with this document.

It is kindly requested that a Notice of Allowance be issued for the pending claims, which are allowable for at least the reasons explained in further detail below.

I. REAL PARTY IN INTEREST

Varia Holdings L.L.C. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

None

III. STATUS OF CLAIMS

Claims 1-3, 5-14, 16-20, 29-31 and 33 are pending and were rejected in the Final Office Action mailed March 17, 2010 (hereinafter referred to as “the Final Office Action”) and by the Advisory Action mailed June 3, 2010 (hereinafter referred to as “the Advisory Action”). A Notice of Panel Decision from Pre-Appeal Brief Review indicated that a panel, formed in response to a Pre-Appeal Brief Request for Review filed on June 16, 2010, decided to allow the case to proceed to appeal (see Notice of Panel Decision mailed August 3, 2010).

Claims 4, 15, 21-28, and 32 were previously canceled.

No claims are allowed or objected to.

The rejections of claims 1-3, 5-14, 16-20, 29-31 and 33 are appealed herein.

IV. STATUS OF AMENDMENTS

There are no outstanding amendments.

The most recent amendments were filed on December 17, 2009 (hereinafter referred to as “the amendment of December 17, 2009”). Applicants filed a Response After Final on May 17, 2010 (hereinafter referred to as “the Response After Final”). While the Advisory Action indicated in Box 7 that proposed amendments would be entered for purposes of appeal, no amendments were offered in Applicant’s Response After Final.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter in the present U.S. Patent Application Serial No. 10/531,162 (hereinafter referred to as “the present application”) includes methods and apparatuses for the context sensitive provision of audio signals in a mobile device. In the claimed method, the mobile device first provides to a user a first audio signal at a first audio volume level, the first audio volume level being selectable by the user. The mobile client device determines the first audio volume level at which the first audio signal is being provided to the user by the mobile client device. While providing said first audio signal to the user at the first audio volume level, the mobile client device provides to the user a second audio signal at a second audio volume level, the second audio volume level being variably controlled by the mobile client device based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially. While providing the first and second audio signals, the

mobile client device incrementally increases the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level. Incrementally increasing further comprises: first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment.

The following discusses independent claims 1, 10, and 29. In accordance with 37 CFR 41.67(c)(1)(v), a concise explanation of the subject matter in the independent claims has been set forth below with reference to the specification by page and line numbers, and to the drawings, if any, by reference characters. Claims 1, 10, and 29 are reproduced below with the required reference information in brackets [] and *italicized*. Of course, the reference numbers and other bracketed information are illustrative only and are not intended to limit the claims to the embodiments shown and described in the specification and figures of the present application.

Claim 1

In a mobile client device [*pg. 4, lines 1-4; pg. 7, line 30 to pg. 8, line 8; pg. 11, lines 4-9 and 19-28; Fig. 1; Fig. 2; Figs. 4A-4B*], a method of operation comprising:

first providing, by the mobile client device, a first audio signal at a first audio volume level to a user [*pg. 4, lines 9-21; pg. 8, lines 9-17; Fig. 1; Fig. 2; Figs. 3A-3B*], the first audio volume level being selectable by the user [*pg. 4, lines 17-21; Fig. 1*];

determining by the mobile client device, the first audio volume level at which the first audio signal is being provided to the user by the mobile client device [*pg. 5, lines 3-9; pg. 7, lines 1-5; pg. 9, lines 3-10; Fig. 3A, block 302*];

while providing said first audio signal to the user at the first audio volume level, providing, by the mobile client device, to the user a second audio signal at a second audio volume level [*pg. 7, lines 4-7; pg. 9, lines 11-18; Fig. 3A, block 304*], the second audio volume level being variably controlled by the mobile client device based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially [*pg. 5, lines 9-21; p. 6, lines 17-20; pg. 7, lines 5-11; pg. 8, lines 18-27; pg. 9, lines 11-19; Fig. 3A, block 304*]; and

while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level [pg. 6, lines 21-30; pg. 9, line 26 to pg. 10, line 30; Fig. 1; Fig. 3B], said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment [pg. 6, lines 24-30; pg. 9, lines 19-25; pg. 10, lines 5-24; Fig. 3B, blocks 308/306 and 316],

second, determining that the user has not responded to the second audio signal [pg. 9, lines 28-30; pg. 10, lines 24-25; Fig. 3B, block 308], and

third, increasing the second audio volume level by a second predetermined increment [pg. 10, lines 24-25; Fig. 3B, block 316].

Claim 10

A wireless mobile phone [pg. 4, lines 1-4; pg. 7, line 30 to pg. 8, line 8; pg. 11, lines 4-9; Fig. 1; Fig. 2; Fig. 4A], comprising:

a first audio resource [pg. 4, lines 1-15; Fig. 1, first audio resource 102], the first audio resource equipped to provide a first audio signal at a first audio volume level at which the mobile phone is being utilized by a user for the first audio signal, the first audio volume level being selectable by the user [pg. 4, lines 9-21; pg. 8, lines 9-17; Fig. 1; Fig. 2; Figs. 3A-3B]; and

a second audio resource [pg. 4, lines 22-27; Fig. 1, second audio resource 110], wherein the second audio resource is equipped to

determine the first audio volume level at which the first audio signal is being provided to the user by the first audio resource [pg. 5, lines 3-9; pg. 7, lines 1-5; pg. 9, lines 3-10; Fig. 3A, block 302],

provide a second audio signal at a second audio volume level to the user while the mobile phone is being utilized by the user for the first audio signal at the first audio volume level [pg. 7, lines 4-7; pg. 9, lines 11-18; Fig. 3A, block 304], the second audio volume level being variably controlled by the second audio resource based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially [pg. 5, lines 9-21; p. 6, lines 17-20; pg. 7, lines 5-11; pg. 8, lines 18-27; pg. 9, lines 11-19; Fig. 3A, block 304],

while the first and second audio signals are being provided, incrementally increase the second audio volume level from the initial non-intrusive volume level to a discernable volume level higher than the first audio volume level [pg. 6, lines 21-30; pg. 9, line 26 to pg. 10, line 30; Fig. 1; Fig. 3B], the second audio resource equipped to incrementally increase the second audio volume level by

first, increasing the second audio volume level by a first predetermined increment [pg. 6, lines 24-30; pg. 9, lines 19-25; pg. 10, lines 5-24; Fig. 3B, blocks 308/306 and 316],

second, determining that the user has not responded to the second audio signal [pg. 9, lines 28-30; pg. 10, lines 24-25; Fig. 3B, block 308], and

third, increasing the second audio volume level by a second predetermined increment [pg. 10, lines 24-25; Fig. 3B, block 316], and

terminate the second audio signal preventing the second audio signal from intruding on the first audio signal in response to a user action [pg. 9, line 30 to pg. 10, line 4; Fig. 3B, block 310].

Claim 29

A mobile client device [pg. 4, lines 1-4; pg. 7, line 30 to pg. 8, line 8; pg. 11, lines 4-9 and 19-28; Fig. 1; Fig. 2; Figs. 4A-4B] comprising:

a storage medium having stored therein a plurality of programming instructions, which when executed, the instructions cause the mobile client device to [pg. 4, lines 9-30; pg. 7, line 30 to pg. 8, line 27; Fig. 2, non-volatile memory 206]

first provide a primary audio signal at a first audio volume level to a user, the primary audio volume level being selectable by the user [pg. 4, lines 9-21; pg. 8, lines 9-17; Fig. 1; Fig. 2; Figs. 3A-3B],

determine the primary audio volume level at which the primary audio signal is being provided to the user [pg. 5, lines 3-9; pg. 7, lines 1-5; pg. 9, lines 3-10; Fig. 3A, block 302], and

while said primary audio signal is being provided to the user at the first audio volume level, provide a secondary audio signal at a second audio volume level to the user [pg. 7, lines 4-7; pg. 9, lines 11-18; Fig. 3A, block 304], the second audio volume level

being variably controlled by the mobile client device based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially [*pg. 5, lines 9-21; p. 6, lines 17-20; pg. 7, lines 5-11; pg. 8, lines 18-27; pg. 9, lines 11-19; Fig. 3A, block 304*], and

while the mobile client device provides the primary and secondary audio signals, incrementally increase the secondary audio volume level from the initial non-intrusive volume level to a discernable volume level higher than the first audio volume level by: [*pg. 6, lines 21-30; pg. 9, line 26 to pg. 10, line 30; Fig. 1; Fig. 3B*]

first, increasing the second audio volume level by a first predetermined increment [*pg. 6, lines 24-30; pg. 9, lines 19-25; pg. 10, lines 5-24; Fig. 3B, blocks 308/306 and 316*],

second, determining that the user has not responded to the second audio signal [*pg. 9, lines 28-30; pg. 10, lines 24-25; Fig. 3B, block 308*], and

third, increasing the second audio volume level by a second predetermined increment [*pg. 10, lines 24-25; Fig. 3B, block 316*]; and

a processor coupled to the storage medium to execute the programming instructions [*pg. 4, lines 1-30; audio system 100, first audio resource 102, second audio resource 110; pg. 6, lines 3-12; pg. 8, lines 1-12 and 18-31; pg. 8, line 32 to pg. 9, 1-2; Fig. 1, audio system 100, second audio resource 110; Fig. 2, micro-controller/processor 202, digital signal processor 204, audio system 212, ring tone generator 222; 3B, block 316*].

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 5-14, 16-20, 29-31 and 33 are unpatentable under 35 U.S.C. § 102(e) as anticipated by Donaldson (U.S. Patent No. 7,272,232).

VII. ARGUMENT

Consistent with a long line of judicial holdings, MPEP § 2131 states that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor*

Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The prior art reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference. *In re Arkley*, 455 F.2d 586 (CCPA 1972). In addition, MPEP § 2143.03 states that “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Donaldson does not clearly and unequivocally disclose the claimed subject matter, as discussed in further detail below. The rejections of claims 1-3, 5-14, 16-20, 29-31 and 33 as anticipated by Donaldson are therefore improper. Withdrawal of the rejections and allowance of the claims is respectfully requested.

A. Claim 1 is not anticipated by Donaldson under 35 U.S.C. § 102(e) because Donaldson fails to clearly and unequivocally disclose the claimed subject matter.

Independent claim 1 recites the following features (emphasis ours):

“In a mobile client device, a method of operation comprising:

first providing, by the mobile client device, a first audio signal at a first audio volume level to a user, the first audio volume level being selectable by the user;

determining by the mobile client device, the first audio volume level at which the first audio signal is being provided to the user by the mobile client device;

while providing said first audio signal to the user at the first audio volume level, providing, by the mobile client device, to the user a second audio signal at a second audio volume level, the second audio volume level being variably controlled by the mobile client device ***based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially;*** and

while providing the first and second audio signals, ***incrementally increasing,*** by the mobile client device, ***the second audio volume level from the initial non-intrusive***

lower volume level to a discernable volume level higher than the first audio volume level, said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment,

second, determining that the user has not responded to the second audio signal, and

third, increasing the second audio volume level by a second predetermined increment.”

Thus, claim 1 is directed to a method in which a mobile device provides a first audio signal to a user at a first audio volume level, which is selectable by the user. While continuing to provide that signal at that volume level, the mobile device provides a second signal at volume that is initially lower than the volume of the first signal. While providing both signals, the mobile device incrementally increases the volume of the second signal to a volume higher than the volume of the first signal. This involves increasing the volume of the second signal, determining that the user has not responded to the second signal, and increasing the volume of the second signal again. Therefore, claim 1 requires that, while the first and second signals are being provided, the second signal is incrementally increased **at least twice**.

Donaldson does not disclose the features of claim 1.

Donaldson is directed to a system and method for prioritizing multiple audio sources and balancing them in a single combined output in a handheld device (see e.g., Abstract; col. 2, lines 27-28). As shown in Figure 2, the illustrated system includes priority logic unit 202, which is coupled to each of variable attenuator/amplifiers 203 and 204 and to audio sources A and B (col. 5, lines 5-10 and 31-39; Fig. 2). Priority logic unit 202 is capable of sensing the amplitude and/or presence of each audio source, and is furnished with prioritization rules allowing it to control gain or attenuation applied by the attenuators/amplifiers 203 and 204 to audio sources A and B, respectively (col. 5, lines 32-44).

Donaldson discloses that there are “many possible prioritization rules that can be used to prioritize the two audio sources” (col. 5, lines 45-46). Donaldson provides one example of a prioritization rule in which audio source A is “attenuated to the point of being effectively muted” whenever audio source B is active (col. 5, lines 46-49). In still another example, Donaldson teaches that when the high priority source B is active, the volume of the low priority source A is reduced; when the high priority source B becomes inactive, the volume of the low priority source A is restored to its previous level (col. 6, lines 21-37; Fig. 3). In another example, a high priority source A is raised in volume or a low priority source B is reduced in volume before the signals are combined and output (col. 6, lines 6-12).

Thus, under these prioritization rules, either the output from one source is muted or reduced in volume whenever the other source is active, or the output from one source is increased or reduced in volume before combination with the output from the other source. At most, the prioritization rules call for a single increase in the volume of a signal followed by a single decrease in the volume of that signal, or vice versa.

Applicants respectfully submit that, at a minimum, the cited passages of Donaldson do not clearly and unequivocally disclose “*while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level, said incrementally increasing further comprising: first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment.*”

1. Donaldson does not disclose “while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level”

On page 4 of the Final Office Action, the Examiner cited column 2, lines 58-62 of Donaldson for teaching “while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level.”

In column 2, lines 52-62, Donaldson discloses that two audio sources A and B are combined into a single output, with each of the audio sources having a predetermined level of attenuation or gain and thus a predetermined signal level ratio (col. 2, lines 55-58). “**Upon sensing an increase in amplitude of source B above a preset threshold level**, the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established between the two sources” (emphasis ours; col. 2, lines 58-62). Therefore, this passage teaches sensing the increase in amplitude of a signal from one audio source and adjusting the attenuation/gain of one or both audio source(s) *based on the sensed increase in amplitude of a signal above a preset threshold level*.

Applicants previously argued that Donaldson does not teach “incrementally increasing” as required by claim 1 (see e.g. the amendment of December 17, 2009, pg. 10-11), because Donaldson merely discloses that a priority rule invokes a fixed, predetermined volume ratio between two audio signals when predetermined conditions are met. The priority rules may cause a signal to be attenuated at a fixed volume ratio during provision of an incoming higher priority signal (see e.g. Fig. 3), continued at the same volume during provision of an incoming lower priority signal (see e.g. Fig. 4), or attenuated at a fixed volume ratio during provision of another signal in excess of a predetermined threshold (see e.g. Fig. 5 and col. 7, lines 15-22). The volume ratio for the two signals remains constant for as long as the rule is applied. Thus, one signal cannot be “incrementally” increased relative to the other signal from an initial non-intrusively lower level at least twice, as required by claim 1. When the rule ceases to apply, the attenuation/amplification of the signal would also cease.

In response to Applicants’ arguments, the Examiner further asserted that “Since it is possible for a new signal ratio to be established as taught by Donaldson the applicant’s arguments are not persuasive” (Final Office Action, pg. 18; citing col. 2, lines 52-62).

Even if we assume *arguendo* and *hypothetically* that the cited disclosure of establishing a new signal ratio can be said to teach **one** increase in signal volume, Donaldson still fails to disclose the recitations of claim 1. At most, Donaldson teaches raising the volume of a signal ***once*** (or lowering the volume of a signal ***once***) in response to determining that a signal has exceeded a preset volume threshold **or** in response to a higher priority signal source becoming active.

In addition, Applicants respectfully note that a mere ***possibility*** of establishing a new signal ratio is simply insufficient to support the rejection of claim 1 under section 102(e) as anticipated by Donaldson. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The cited passages do not expressly disclose “incrementally increasing” the second signal “from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level” as recited in claim 1, which includes **at least two** incremental increases of the second signal (from the initial non-intrusively lower level). Nor has the Examiner provided any basis in fact and/or technical reasoning to reasonably support the determination that these features **necessarily** flow from the teachings of Donaldson; *see e.g., Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

Applicants find no passage or figure in the cited reference that teaches “incrementally increasing . . .” as required by claim 1.

2. Donaldson does not disclose “said incrementally increasing further comprising: first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment.”

The Examiner cited column 5, lines 50-54 of Donaldson for teaching “said incrementally increasing further comprising: first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second

audio signal, and third, increasing the second audio volume level by a second predetermined increment” (Final Office Action, pg. 4). Column 6, lines 35-38 and column 2, lines 52-62 of Donaldson were also cited in the Advisory Action for teaching “said incrementally increasing further comprising”

More specifically, with regard to the “first increment” and the “second increment,” the Examiner cited column 2, lines 52-62 for teaching that “one audio source can be initially incremented according to a predetermined signal ratio, and afterwards the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established, indicating a different second increment” (Final Office Action, pg. 19; Advisory Action). With regard to “second, determining that the user has not responded to the second audio signal,” the Examiner cited column 5, lines 50-54 and column 6, lines 35-38 for the premise that “the presence of a source constitutes a determination of the user’s response to the audio signal, as once the user responds to the audio signal it will become inactive” (Final Office Action, pg. 19; Advisory Action).

These passages do not teach the recitations of claim 1.

First, in column 5, lines 50-54, Donaldson states:

“For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources. Alternatively, prioritization between a signal event and a continuous source may be dependent upon the presence of a continuous source, regardless of the immediate sound level.”

Therefore, in this passage Donaldson teaches setting “absolute levels” relative to a fixed volume level, *or* the level of a source, *or* the presence of a source, *or alternatively* prioritizing between a signal event source and a continuous source based on the presence of the continuous source, regardless of the immediate sound level.

Next, in column 6, lines 35-38, Donaldson discloses an example in which the volume of a lower priority source is **reduced** in response to the higher priority source becoming active. (see col. 6, lines 22-37; Fig. 3). Signals from a higher priority signal event source B (e.g. a telephone ring) and a lower priority continuous source A are combined according to their relative

priorities (see col. 6, lines 22-37; Fig. 3). Initially, signal event source B is *inactive* while the signals from continuous source A (“input A”) are at an arbitrary level. When source B becomes active, source A is attenuated (Applicants note that a typographical error in the text indicates attenuation of “Mixer input B”; however, as shown in Fig. 3, this should read “Mixer input A”). When source B becomes inactive again, source A is restored to its previous volume (col. 6, lines 22-37; Fig. 3).

Finally, in column 2, lines 52-62, Donaldson teaches (as described above) sensing the increase in amplitude of a signal from one audio source and adjusting the attenuation/gain of one or both audio source(s) ***based on the sensed increase in amplitude of a signal above a preset threshold level.***

None of these passages teach “incrementally increasing” the second signal as required by claim 1. “Incrementally increasing” the second audio signal volume level must include (first) increasing the second audio volume by a first predetermined increment, (second) determining that the user has not responded to the second audio signal, and (third) increasing the second audio volume level by a second predetermined increment. Thus, claim 1 requires increasing the volume of the second signal from the initially lower non-intrusive volume by predetermined increments **at least twice** while providing both the first signal and the second signal. At most, Donaldson teaches a single increase or decrease in the volume of a signal in response to activation of another signal source (see e.g. Fig. 3, Fig. 4) or sensing an increase in amplitude of a signal above a threshold level (see e.g. Fig. 5).

In response to the Examiner’s assertion that Donaldson’s disclosure of a predetermined signal ratio teaches a “first increment” and that establishing a new signal ratio (col. 2, lines 52-62) teaches a “second increment,” Applicants respectfully disagree. As discussed above, those passages refer to the establishment of a new signal ratio between two signals ***based on a detected increase in the amplitude of one of the signals above a preset threshold level.*** In contrast, claim 1 requires the second signal to be incrementally increased by the “second increment” pursuant to ***“second, determining that the user has not responded to the second audio signal.”***

None of the cited passages teaches incrementally increasing the volume of the second signal *from an initially lower non-intrusive level to a volume level higher than that of the first signal*, with the “incrementally increasing” including: “. . . **first**, increasing the second audio volume level by a first predetermined increment, **second, determining that the user has not responded to the second audio signal**, and **third**, increasing the second audio volume level by a second predetermined increment.”

Even if the cited passage could be said to fairly teach “first, increasing . . .” (Applicants do not concede this), the cited passage still does not teach “**second, determining that the user has not responded to the second audio signal**.” Therefore, the cited passage cannot teach “third, increasing . . . by a second predetermined increment” because this is an operation pursuant to “second, determining that the user has not responded to the second audio signal.”

With regard to the Examiner’s assertion that “the presence of a source constitutes a determination of the user’s response to the audio signal, as once the user responds to the audio signal it will become inactive . . .” (citing col. 5, lines 50-54 and col. 6, lines 35-38), Applicants respectfully disagree. Of the two passages cited, the first merely discloses setting “absolute levels” relative to a fixed volume level, **or** the level of a source, **or** the presence of a source, **or alternatively** prioritizing between a signal event source and a continuous source based on the presence of the continuous source, regardless of the immediate sound level. The second merely teaches that when the high priority signal event source becomes active, the volume of the low priority continuous audio source is reduced (col. 6, lines 35-38). As illustrated in Figure 3, the volume of the low priority signal is maintained at the reduced level until the high priority signal event source becomes inactive, at which time the low priority signal is restored to its former volume.

Even if we assume *arguendo* and *hypothetically* that the Examiner’s interpretation of Donaldson as teaching a determination of the user’s response is appropriate (Applicants do not concede this), the cited passages of Donaldson cannot be interpreted as teaching “determining that a user has **not** responded to the second audio signal.” At most, the cited passages merely teach that when the user **does respond** to the high priority source signal, the high priority source will become inactive and the low priority source signal will be restored to its previous volume.

Nor does Donaldson does not disclose increasing the volume of the second signal by a second predetermined increment *pursuant to* determining that a user has **not** responded to the signal. Column 6, lines 35-38 and Figure 3 indicate that as long as the high priority source remains active, the low priority source ***remains at the same attenuated volume level***. Once the user responds, only one signal (i.e., the low priority signal) continues to be provided. In contrast, claim 1 requires ***incrementally*** increasing the volume of the second signal at least ***twice*** (from the initial non-intrusive lower level) ***while both signals are being provided***.

In summary, Applicants respectfully assert that the cited passages of Donaldson do not provide the clear and unequivocal teaching required by law to support the rejections under 35 U.S.C. 102(e). At a minimum, Donaldson fails to teach the multiple incremental increases of the second audio volume that are required by the recitations of claim 1, including “***first***, increasing the second audio volume level by a first predetermined increment, ***second***, determining that the user has not responded to the second audio signal, and ***third***, increasing the second audio volume level by a second predetermined increment.”

Applicants submit that Donaldson fails to teach each and every element recited in claim 1. Therefore, the rejection of claim 1 is improper, and claim 1 is allowable over Donaldson under 35 U.S.C. 102(e).

B. Claims 2, 3, 5-14, 16-20, 29-31 and 33 are not anticipated by Donaldson under 35 U.S.C. § 102(e) because Donaldson fails to clearly and unequivocally disclose the claimed subject matter.

Independent claims 10 and 29 are directed to a wireless mobile phone and a mobile client device, respectively, and recite subject matter generally similar to that of claim 1. For at least the reasons described above with regard to claim 1, Donaldson fails to teach each and every element recited in claims 10 and 29. Therefore, the rejections of claims 10 and 29 are improper, and claims 10 and 29 are allowable over Donaldson under 35 U.S.C. 102(e).

Claims 2, 3, 5-9, 11-14, 16-20, 30, 31, and 33 depend from independent claim 1, 10 or 29, incorporating the recitations of their base claims. Claims 2, 3, 5-14, 16-20, 29-31, and

33 are also allowable over Donaldson under 35 U.S.C. 102(e) by virtue of their dependence from allowable base claims, as well as by virtue of their additional recitations which are not clearly and unequivocally taught by Donaldson. Therefore, the rejections of those claims are also improper.

In view of the arguments as set forth above, the Examiner's rejections of the claims should be withdrawn. Applicants respectfully request withdrawal of the rejections and allowance of the pending claims.

Respectfully submitted,
Schwabe, Williamson & Wyatt

Date: October 4, 2010

By: s/Jo Ann Schmidt/
Jo Ann Schmidt
Registration No. 62,255

Schwabe, Williamson & Wyatt
1420 Fifth Avenue, Suite 3010
Seattle, Washington 98101
Phone: (206) 407-1574
Fax: (206) 292-0460

VIII. CLAIMS APPENDIX

1. (Previously Presented) In a mobile client device, a method of operation comprising:
first providing, by the mobile client device, a first audio signal at a first audio volume level to a user, the first audio volume level being selectable by the user;
determining by the mobile client device, the first audio volume level at which the first audio signal is being provided to the user by the mobile client device;
while providing said first audio signal to the user at the first audio volume level,
providing, by the mobile client device, to the user a second audio signal at a second audio volume level, the second audio volume level being variably controlled by the mobile client device based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially; and
while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level, said incrementally increasing further comprising:
first, increasing the second audio volume level by a first predetermined increment,
second, determining that the user has not responded to the second audio signal, and
third, increasing the second audio volume level by a second predetermined increment.
increment.
2. (Previously Presented) The method of claim 1, wherein said determining the first audio volume level comprises the mobile client device determining a first audio volume level at which the mobile client device is being utilized by a user for a first audio signal corresponding to music associated with output of at least one of an MP3 player and a radio included with the mobile client device.
3. (Previously Presented) The method of claim 1, wherein said second providing the second audio signal comprises the mobile client device providing the second audio signal corresponding to a ring tone associated alert for at least a selected one from the group consisting of an incoming

call, a received indication of a text message, a received indication of a voicemail message, a calendar alert, and a wireless mobile phone system utilities warning.

4. (Cancelled)

5. (Previously Presented) The method of claim 1, wherein said incrementally increasing comprises incrementally increasing the second audio volume level to a pre-determined audio volume level limit above which hearing damage is likely to occur.

6. (Previously Presented) The method of claim 1, wherein said incrementally increasing comprises incrementally increasing the second audio volume level by a selected one of a constant increment and an increasing increment.

7. (Previously Presented) The method of claim 1, wherein said determining comprises the mobile client device determining the first audio volume level measured as an audio power level.

8. (Previously Presented) The method of claim 7, wherein said determining the first audio volume level comprises the mobile client device determining the first audio volume level measured as at least one of volts, watts, and decibels.

9. (Previously Presented) The method of claim 1, further comprising the mobile client device mixing said first and second audio signals and providing the first and second audio signals as a mixed signal, the second audio volume level being variably controlled by the mobile client device based at least in part on said mixed signal.

10. (Previously Presented) A wireless mobile phone comprising:

a first audio resource, the first audio resource equipped to provide a first audio signal at a first audio volume level at which the mobile phone is being utilized by a user for the first audio signal, the first audio volume level being selectable by the user; and

a second audio resource, wherein the second audio resource is equipped to

determine the first audio volume level at which the first audio signal is being provided to the user by the first audio resource,

provide a second audio signal at a second audio volume level to the user while the mobile phone is being utilized by the user for the first audio signal at the first audio volume level, the second audio volume level being variably controlled by the second audio resource based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially,

while the first and second audio signals are being provided, incrementally increase the second audio volume level from the initial non-intrusive volume level to a discernable volume level higher than the first audio volume level, the second audio resource equipped to incrementally increase the second audio volume level by

first, increasing the second audio volume level by a first predetermined increment,

second, determining that the user has not responded to the second audio signal, and

third, increasing the second audio volume level by a second predetermined increment, and

terminate the second audio signal preventing the second audio signal from intruding on the first audio signal in response to a user action.

11. (Previously Presented) The wireless mobile phone of claim 10, wherein the first audio resource comprises at least one of an MP3 player and a radio.

12. (Original) The wireless mobile phone of claim 10, wherein the second audio resource comprises an audio resource equipped to receive a delivery of a message alert to the user.

13. (Previously Presented) The wireless mobile phone of claim 12, wherein the second audio resource comprises a ring tone generator.

14. (Previously Presented) The wireless mobile phone of claim 12, wherein the second audio resource is equipped to receive a delivery of a message alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, a received

indication of a voicemail message, a calendar alert, and a wireless mobile phone system utilities warning.

15. (Cancelled)

16. (Previously Presented) The wireless mobile phone of claim 10, wherein the second audio resource is equipped to incrementally increase the second audio volume level to a predetermined audio volume level limit above which hearing damage is likely to occur.

17. (Previously Presented) The wireless mobile phone of claim 10, wherein second audio resource is equipped to incrementally increase the second audio volume level by a selected one of a constant increment and an increasing increment.

18. (Previously Presented) The wireless mobile phone of claim 10, wherein the first and second audio volume levels are measured as audio power levels.

19. (Previously Presented) The wireless mobile phone of claim 18, wherein the audio power levels are measured in at least one of volts, watts, and decibels.

20. (Previously Presented) The wireless mobile phone of claim 10, further comprising a mixer, the mixer equipped to mix the first and second audio signals, the second audio resource being further equipped to variably control the second audio volume level based at least in part on the mixed signal.

21.-28. (Cancelled)

29. (Previously Presented) A mobile client device comprising:

a storage medium having stored therein a plurality of programming instructions, which when executed, the instructions cause the mobile client device to

first provide a primary audio signal at a first audio volume level to a user, the primary audio volume level being selectable by the user,

determine the primary audio volume level at which the primary audio signal is being provided to the user, and

while said primary audio signal is being provided to the user at the first audio volume level, provide a secondary audio signal at a second audio volume level to the user, the second audio volume level being variably controlled by the mobile client device based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially, and

while the mobile client device provides the primary and secondary audio signals, incrementally increase the secondary audio volume level from the initial non-intrusive volume level to a discernable volume level higher than the first audio volume level by:

first, increasing the second audio volume level by a first predetermined increment,

second, determining that the user has not responded to the second audio signal, and

third, increasing the second audio volume level by a second predetermined increment; and

a processor coupled to the storage medium to execute the programming instructions.

30. (Previously Presented) The mobile client device of claim 29, wherein the primary audio signal corresponds to music associated with output of at least one of an MP3 player and a radio included with the mobile client device.

31. (Previously Presented) The mobile client device of claim 29, wherein the secondary audio signal corresponds to a ring tone associated alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, a received indication of a voicemail message, a calendar alert, and a wireless mobile phone system utilities warning, and the programming instructions are further configured to terminate the secondary audio signal preventing the secondary audio signal from intruding on the primary audio signal in response to an user action.

32. (Cancelled)

33. (Previously Presented) The mobile client device of claim 29, wherein the primary audio volume level is measured as an audio power level.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.